

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHAEL FRANCIS SPITZLEY, and
THE ESTATE OF DAVID SPITZLEY,

Supreme Court No.: 130585

Plaintiffs-Appellees,

vs.

Court of Appeals
No.: 255345

THOMAS P. SPITZLEY and
KIMBERLY S. SPITZLEY,

Clinton Circuit No.:
2003-009578-CZ

Defendants-Appellants.

PLAINTIFFS-APPELLEES'
RESPONSE TO DEFENDANTS-APPELLANTS'
APPLICATION FOR LEAVE TO APPEAL

CERTIFICATE OF SERVICE

WILLIAM G. JACKSON, P.C.
Roberta R. Ballard (P38631)
Attorneys for Plaintiffs-Appellees
120 E. Walker Street
P.O. Box 246
St. Johns, MI 48879
(989) 224-6734

MICHAEL A. FARAONE, PC
Michael A. Faraone (P45332)
Attorney for Defendant-Appellant
617 North Capitol Avenue
Lansing, MI 48933
(517) 484-5515

WILLIAM G. JACKSON, P.C.
ATTORNEYS AT LAW
JACKSON PROFESSIONAL BLDG.
120 E. WALKER STREET
P.O. BOX 246
ST. JOHNS, MICHIGAN 48879
(989) 224-6734

FILED

MAR 17 2006

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

TABLE OF CONTENTS

1.	INDEX OF AUTHORITIES	iii
2.	STANDARD OF REVIEW	iv
3.	DATE AND NATURE OF ORDERS BEING APPEALED	v
4.	QUESTION PRESENTED	vi
5.	STATEMENT OF APPELLATE JURISDICTION	vii
6.	COUNTER STATEMENT OF PROCEEDINGS AND FACTS	1
7.	ARGUMENT	4
8.	RELIEF REQUESTED	9

INDEX OF AUTHORITIES

MICHIGAN STATUTES

MCL 566.106	5, 6
MCL 566.108	5, 6
MCL 600.2591	2, 4

MICHIGAN COURT RULES

MCR 7.302(B)(3) & (5)	vii
MCR 7.204(A)(1)(a)	2

MICHIGAN CASES

<i>In Re Costs and Attorney Fees</i> , 250 Mich App 89, 94, 95, 645 NW2d 697 (2002)	4
<i>Kirchen v Remenga</i> , 291 Mich 94; 288 NW 344 (1939)	6
<i>Kitchen v Kitchen</i> , 465 Mich 654, 661-662; 641 NW2d 245 (2002)	iv, 4
<i>Potter v Chamberlin</i> , 344 Mich 399; 73 NW2d 844 (1955)	5
<i>Thurn v McAra</i> , 374 Mich 22; 130 NW2d 887 (1964)	6
<i>Vobless v Weisenthal</i> , 293 Mich 565; 292 NW 493 (1940)	6

STANDARD OF REVIEW

“A Trial Court’s finding that an action is frivolous is reviewed for clear error. A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

DATE AND NATURE OF ORDERS BEING APPEALED

February 7, 2006 Court of Appeals Order Denying Motion for Reconsideration

December 1, 2005 Court of Appeals Order Affirming Trial Court Order Imposing
Sanctions

April 15, 2004 Circuit Court Order Awarding Sanctions and Costs

WILLIAM G. JACKSON, P.C.
ATTORNEYS AT LAW
JACKSON PROFESSIONAL BLDG.
120 E. WALKER STREET
P.O. BOX 246
ST. JOHNS, MICHIGAN 48879

(989) 224-6734

QUESTION PRESENTED

ISSUE

WHETHER OR NOT THE COURT OF APPEALS PANEL WAS CORRECT WHEN IT UNANIMOUSLY AFFIRMED THE DECISION OF THE TRIAL COURT TO AWARD ATTORNEY FEES AND COSTS TO PLAINTIFFS-APPELLEES AND AGAINST DEFENDANTS-APPELLANTS AND THEIR COUNSEL FOR FILING A FRIVOLOUS ANSWER AND COUNTER-COMPLAINT?

Plaintiff/Appellee would answer, "Yes"

Defendants/Appellants would answer, "No"

Trial Court would answer, "Yes"

Court of Appeals would answer, "Yes"

STATEMENT OF APPELLATE JURISDICTION

Defendants-Appellants allege that the issue involves legal principles of major significance to the State's jurisprudence pursuant to MCR 7.302(B)(3), and that the Court of Appeals' decision is clearly erroneous and will cause material injustice, pursuant to MCR 7.302(B)(5).

Plaintiffs-Appellees acknowledge that the Application for Leave was filed within forty-two days after the Court of Appeals clerk mailed notice of the Order Denying the Motion for Re-Hearing.

Plaintiffs-Appellees affirm that the Court of Appeals decisions uphold long-established Michigan jurisprudence with regard to real property transfers and the appropriate imposition of sanctions. Therefore, the requirements of MCR 7.302(B)(3) and (5) are not met by the Application for Leave to Appeal.

COUNTER STATEMENT OF PROCEEDINGS AND FACTS

In May of 2003, the Plaintiffs-Appellees, Co-Personal Representatives of the Estate of David Spitzley, filed a Complaint to Remove Cloud on Title of a forty-acre parcel of property and Reformation of the Personal Representative's Deed, which had incorrectly included a metes and bounds description of a forty-acre parcel not owned by the Estate.

Defendants-Appellants filed an Answer and Counter-Complaint and a hearing was held on competing motions for summary disposition in October of 2003.

The Decedent had deeded the disputed forty-acre parcel to himself and his son, Michael Spitzley, as joint tenants with rights of survivorship, prior to the death of the decedent.

At the hearing on the competing motions for summary disposition, the Court held that the Estate could not transfer the forty-acre parcel by means of its accidental inclusion in the Personal Representative's Deed, as the Estate did not own the parcel at the time of the transfer. Therefore, the Trial Court granted Plaintiffs' Petition to remove the cloud on the title of the forty-acre parcel and to reform the Personal Representative's Deed to include only the real property which the Estate had intended to convey. The Trial Court's Order was entered on October 24, 2003. (See **Exhibit 1** attached hereto). No damages were awarded. The Trial Court took under advisement the Plaintiffs-Appellees' request for sanctions in the form of attorney fees and costs to be entered against Defendants-

Appellants and their counsel for filing a frivolous Counter-Complaint, pursuant to MCL 600.2591.

The Trial Court entered its Order awarding attorney fees and costs and sanctions for filing a frivolous counter-complaint on April 15, 2004. (See **Exhibit 2** attached hereto).

Court of Appeals Docket No. 257022

The Defendants-Appellants filed a Claim of Appeal by Right from the October 24, 2003, Order on May 5, 2004. This Claim of Appeal was dismissed by the Court of Appeals on June 10, 2004,

“The Claim of Appeal from the October 24, 2003, Final Order is DISMISSED for lack of jurisdiction because Appellant failed to file the claim within 21 days of the Order’s entry as required by MCR 7.204(A)(1)(a). (See **Exhibit 3** attached hereto).

Defendants-Appellants filed an Application for Leave to Appeal-Late Appeal, given Court of Appeals Docket No. 257022 and the Court of Appeals dismissed this Application on October 14, 2004. (See **Exhibit 4** attached hereto). The Defendants-Appellants’ Motion for Reconsideration was denied by the Court of Appeals on November 18, 2004. (See **Exhibit 5** attached hereto).

There was no Application for Leave to Appeal to the Supreme Court filed by Defendants-Appellants with regard to the Trial Court’s October 24, 2003, Order with regard to the underlying real property issue.

Court of Appeals Docket No. 255345

The Trial Court entered its Order on April 15, 2004 awarding Plaintiffs-Appellees sanctions in the form of attorney fees and costs payable by Defendants-Appellants and their counsel in the total amount of SIX THOUSAND SIX HUNDRED FIFTY-FIVE and 02/100 (\$6,655.02) DOLLARS. (See **Exhibit 2** attached hereto). The Claim of Appeal by Right was filed on May 5, 2004. The Court of Appeals released its unanimous decision affirming the Trial Court's Order on December 1, 2005. (See **Exhibit 6** attached hereto). A Motion for Reconsideration was filed and on February 7, 2006, the Court of Appeals denied the Motion for Reconsideration by a two to one decision. (See **Exhibit 7** attached hereto).

The Defendants-Appellants have filed their Application for Leave to Appeal to the Supreme Court for the State of Michigan on the unanimous Court of Appeals decision to affirm the award of attorney fees and costs as sanctions against Defendants-Appellants and their counsel for filing a frivolous Answer / Counter-Complaint.

The Defendants-Appellants have stated the substance of their questions presented as if they were appealing the Trial Court decision to remove the cloud on title of the forty-acre real property parcel and to reform the Personal Representative's Deed, both in the Court of Appeals and in their Application for Leave to Appeal to this Court. The only issue which has been preserved for appeal to this Court is the unanimous ruling of the Court of Appeals to affirm the Trial Court decision to award attorney fees and costs as sanctions.

ARGUMENT

“A Trial Court’s finding that an action is frivolous is reviewed for clear error. A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

The Application for Leave to Appeal to this Court is made from the Court of Appeal’s Order affirming the Trial Court Order to grant attorney fees and costs as sanctions for filing a frivolous counter-complaint. As stated by the Court of Appeals in their Opinion,

“When determining if sanctions are appropriate, courts must evaluate the claims and defenses at the time they were made. The Trial Court’s factual determination depends on the specific facts and circumstances of the claim involved.” *In Re Costs and Attorney Fees*, 250 Mich App 89, 94, 95, 645 NW2d 697 (2002).

The only issue preserved for appeal to this Court is the issue of whether or not the Trial Court committed clear legal error when it held that, “The Defendants-Appellants had no reasonable basis to believe that the underlying facts were true and the Defendants-Appellants’ position was devoid of arguable legal merit.” MCL 600.2591(3)(a). *Trial Court Opinion and Order Awarding Sanctions and Costs*, April 15, 2004. (See **Exhibit 2** attached hereto).

In the above Opinion, the Trial Judge also accurately stated the stipulation made by both parties at a Pretrial Conference on December 15, 2003, to submit the entire

sanctions/damages issue to the Court on their pleadings, exhibits, affidavits and briefs. The Court indicated that it had reviewed all of the above documents before making its determination that the Counter-Complaint was frivolous.

Defendants-Appellants' summary herein includes an Exhibit E, which Appellants acknowledge was not even located until after the Trial Judge entered his Opinion and Order for Sanctions. Even though the document attached to this application as Exhibit E was not available as evidence it also fails to support Appellants' allegation that the Fiduciaries ever intended to convey an interest in the forty-acre parcel which the Estate never held title to.

Among the pleadings considered by the Trial Judge was the Plaintiff's Brief in Support of their Motion for Summary Disposition. Contrary to the statements of the Defendants-Appellants, this Brief contained substantial case law supporting the Plaintiffs' position that a Court could infer a mutual mistake from the circumstances¹, including the fact that none of the documentary evidence available in October of 2003 or April of 2004 supported any intent by either of the parties to purchase or to sell the forty-acre parcel; and that the Statute of Frauds, MCL 566.106 and MCL 566.108, in Michigan and numerous cases interpreting this statute clearly held that one of the Co-Personal Representatives could not convey his personal interest in the forty-acre parcel not owned by the Estate

WILLIAM G. JACKSON, P.C.
ATTORNEYS AT LAW
JACKSON PROFESSIONAL BLDG.
120 E. WALKER STREET
P.O. BOX 246
ST. JOHNS, MICHIGAN 48879
(989) 224-6734

¹ *Potter v Chamberlin*, 344 Mich 399; 73 NW2d 844 (1955)

when he signed a Personal Representative's Deed in his fiduciary capacity only.² The only document that made specific reference to the forty-acre parcel was the Personal Representative's Deed, and this reference was included entirely in error.

Defendants-Appellants continue in their attempt to create a new rule of law in the State of Michigan contrary to the Michigan Statute of Frauds, MCL 566.106 and MCL 566.108, and extensive case law construing this statute. "The controlling Michigan authority" referenced by the Court of Appeals in its unanimous decision to affirm the Trial Court's award of attorney fees and costs as sanctions for filing a frivolous action, was that Michigan case law referenced by Plaintiffs-Appellees in support of the clearly stated Opinion of the Trial Court that the Plaintiff Estate could not transfer title to property when the Estate did not have ownership of the contested forty-acre parcel. The Trial Court did not commit clear legal error when it stated that the Defendants-Appellants had not presented any documentary evidence that supported their position that one of the Co-Personal Representatives intended to convey property he owned in his individual capacity when the legal description of that property was accidentally included in the Fiduciaries' Deed. Although Defendants-Appellants insist that there was no "mutual mistake" to support reformation of the Personal Representative's Deed, if they believed the Estate owned the forty acre parcel, they were mistaken. When the Personal Representative's

WILLIAM G. JACKSON, P.C.
ATTORNEYS AT LAW
JACKSON PROFESSIONAL BLDG.
120 E. WALKER STREET
P.O. BOX 246
ST. JOHNS, MICHIGAN 48879

(989) 224-6734

² *Thurn v McAra*, 374 Mich 22; 130 NW2d 887 (1964); *Vobless v Weisenthal*, 293 Mich 565; 292 NW 493 (1940); *Kirchen v Remenga*, 291 Mich 94; 288 NW 344 (1939).

Deed was executed and delivered, both parties believed that the Deed described property which the Estate owned and was able to convey. This was obviously a mutual mistake.

The Trial Court's Opinion and Order Awarding Sanctions contained no legal error whatsoever and the unanimous affirmation of this Opinion by the Court of Appeals was correct, appropriate, and upholds existing Michigan Law.

There are several inaccuracies in statements made by counsel for Defendants-Appellants on Pages eight and nine of the within Application. Contrary to counsel's statements, the Appellees cited extensive Michigan Law in support of the legal issue pertinent to the sanction, i.e. that a grantor cannot transfer property in which the grantor holds no interest; and that a party does not transfer interest in property held as an individual when that individual signs a deed only in his capacity as a fiduciary. This was the issue considered by the Trial Court in its determination that the Defendants-Appellants' Counter-Complaint was frivolous. The Trial Court also correctly held that:

“Defense counsel forced Plaintiffs to incur needless litigation costs when he blindly accepted Defendants-Appellants' unsupported allegations and argued law from foreign jurisdictions, rather than controlling Michigan law.”

Also on Page eight of the Application for Leave to Appeal to this Court, counsel for appellants states that **Exhibits G, H, I, and J**, “[A]re affidavits from the loan officer, the title agent, a sibling, and appellees themselves.” *Emphasis added.* **Exhibits G, H, and I** are from the loan officer, title agent and sibling. **Exhibit J is from the Appellants**, not from the Appellees.

Also on Page eight, Appellants' counsel indicates that Appellees created the Deed. Appellants' counsel is well aware that the Deed was created by the Title Company. Likewise, on Page nine, counsel indicates that, "[T]he Appellees claim that they did not read what they signed . . ." This is also inaccurate. Appellees have always stated that they were unaware that the metes and bounds legal description prepared by the Title Company included the forty-acre parcel as well as the house and lot, not that the Fiduciaries did not read what they signed.

The sanctions awarded by the Trial Court Judge and unanimously affirmed by the Court of Appeals were entirely appropriate as to the Appellants and their counsel for the reasons cited above.

WHEREFORE, Plaintiffs-Appellees pray to this Honorable Court to deny the Defendants-Appellants' Application for Leave to Appeal.


RELIEF REQUESTED

Plaintiffs-Appellees hereby pray that this Honorable Court deny the Application for
Leave to Appeal filed by Defendants-Appellants herein.

Respectfully submitted,

WILLIAM G. JACKSON, P.C.

Dated: March 16, 2006

By: 
Roberta R. Ballard (P38631)
Counsel for Plaintiff/Appellant

BUSINESS ADDRESS:
WILLIAM G. JACKSON, P.C.
120 E. Walker Street
P. O. Box 246
St. Johns, MI 48879
(989) 224-6734

WILLIAM G. JACKSON, P.C.
ATTORNEYS AT LAW
JACKSON PROFESSIONAL BLDG.
120 E. WALKER STREET
P.O. BOX 246
ST. JOHNS, MICHIGAN 48879

(989) 224-6734